

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5794 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL

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1. Whether Reporters of Local Papers may be allowed : YES  
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO
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SAVARKUNDLA MUNICIPALITY

Versus

ALLARKHA PIRBHAI BHATTI

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Appearance:

MR JD AJMERA for Petitioner  
MR YV SHAH for Respondent

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CORAM : MR.JUSTICE B.C.PATEL

Date of decision: 17/11/2000

ORAL JUDGEMENT

1. Savarkundla Municipality has preferred this Special Civil Application against the award made by the Presiding Officer, Labour Court, Bhavnagar in Reference No. 687 of 1987 on 22/2/1989. On appreciation of

evidence, the Labour Court accepted the say of the workman and directed the present petitioner to reinstate the respondent on his original post with back-wages with continuity of service and Rs.100/- by way of costs.

2. The respondent-workman was working as a Bore Operator. As per his say, he was working continuously and therefore, his services could not have been terminated arbitrarily and without following the procedure laid down under the Industrial Disputes Act. Evidence in detail has been considered. Suffice it to say that as observed in para-13 of the order, the respondent-workman continuously worked from 16/5/1984 to 30/9/1986. Muster roll was examined by the Court and it is found that in the first year, he worked for 320 days, in the second year, he worked for 242 days and in the third year, when his services were terminated, his presence was for 251 days. Having worked for more than 240 days in a year, he becomes entitle to get the protection as indicated in the Industrial Disputes Act. The learned Judge has also considered that in the instant case, apart from the fact that the retrenchment compensation was not paid, some workmen were employed. However, no offer was made to the respondent-workman to join the duties. In that behalf, evidence is placed on the record. As a matter of fact, the Labour Court has observed that while taking other workmen for the first time, present respondent was not called upon to join the duties. No registered letter is written for joining the duties. Considering all these aspects, the Labour Court was of the view that the respondent has committed violations of the provisions contained in the Industrial Disputes Act.

3. The Labour Court also refused to accept the oral say of the present petitioner to the effect that the workman is gainfully employeed. The Chief Officer, has in his evidence, stated that the workman is working elsewhere. He has seen him with a cart. However, about his working or earning, no evidence has been led. As against which the workman has stated that he is not gainfully employed. Thus, the workman was entitled to get the benefits and it is difficult to interfere with the order made by the Labour Court.

4. Mr. J.D. Ajmera appearing for the petitioners submitted that by letter dated 19/10/1992, the workman was asked to resume the duties. In the affidavit, it is specifically mentioned that the respondent informed the Chief Officer of the Municipality in writing that the Court has stayed the order sujetc to provisions contained

in section-17B of the I.D. Act till pendency of the Special Civil Application. It is also averred that the respondent has informed that he should be given salary which is given to other workmen and if the Municipality is ready and willing to give the same, then the respondent would resume the duties. From the letter annexed with the Affidavit, it is very clear that he was asked to join the duties by letter dated 19/10/1992 and was offered salary which was being received by him at the time when he was relieved. He was relieved in 1986 and according to this letter, in 1992, he was offered salary which otherwise he would have got it in the year 1986. In view of this letter, the workman addressed a letter on 26/10/1992, a xerox copy of which has been placed by the petitioner Municipality on the record. Reading the letter addressed by the workman, it is clear that the workman questioned the Municipality that whether the municipality is willing to pay any salary at the rate at which other workmen working in the category are paid the salary ? and further said that he would be willing to join the duties if salary is paid, otherwise, he is entitled to get the benefit of section-17B of the Act as directed by the Division Bench of this Hon'ble Court. There is no reply given to this letter to the workman and therefore, it would not be possible to accept the contention raised by the Municipality that after 19/10/1992, the workman is not entitled to any benefit. If the Municipality would have replied, it would have been clear that it was only eye wash or genuine offer.

5. However, Mr. Y.V. Shah, appearing for the workman, fairly submitted that the learned Single Judge of this Court in Special Civil Application No. 5577/1996 and other matters, after hearing the persons working with the said Municipality, reduced the back-wages to 70%. Mr. Shah fairly stated that if that direction is given, it would be just and proper as other workmen working in the said Municipality are given benefit in the similar situation with 70% of back wages. It would be just and proper to direct the Municipality to pay 70% of back-wages within a period of 2 months from today. The Special Civil Application is, therefore, rejected and the award is hereby confirmed with the aforesaid modification. Rule is made absolute to the aforesaid extent. No order as to costs.

(B.C. PATEL, J.)

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